HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.1180 of 2006

Between:

Mohammad Hussain Miah and another
... Appellants

And

The Joint Sub-Registrar – I,
Sub-Registration Office, Kurnool
and another
...
Respondents

::JUDGMENT::

Counsel for the appellants: Shri S.V. Ramana

January 25, 2007

Per G.S. Singhvi, CJ

Feeling dissatisfied with the order of the learned Single Judge, who declined to entertain the writ petition filed by them for directing respondent No.1 to register the sale-deed in respect of land measuring Ac.4-57 gts. comprised in Survey No.399 of Dinnedevarapadu Village, Kurnool District, the

appellants have preferred this appeal under Clause 15 of the Letters Patent.

The land, which the appellant claims to have purchased from the legal heirs of one Vengala Reddy forms part of Survey No.396, Dinnedavarapadu Village having an extent of Ac.1409.41 cts. The said survey number is recorded in the name of Revenue Department and the land is shown as government land. Whenever any portion of Survey No.396 was assigned to landless poor persons or allotted to government departments/institutions for construction of government buildings, then the same was split up and running survey numbers were given. The extent of Ac.4-57 cts. of land was assigned to Smt. Vadde Pullamma w/o.Vadde Seshanna for agricultural purpose subject to the condition that the land shall be utilized for agricultural operations and shall not be alienated by the assignee. The land assigned to Smt.Vadde Pullamma was given Survey No.399. On coming to know of the alienation of the land by the assignee and her legal heirs, Mandal Revenue Officer, Kurnool (respondent No.2) issued notice dated 10-10-2005 in Form No.I under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 and cancelled the assignment vide his order dated 26-10-2005.

It is borne out from the record that the assignee – Smt.Vadde Pullamma executed registered Will dated 1-9-1945 in favour of Vadde Yellappa S/o.Vadde

Subbanna. After the demise of the assignee, Vadde Yellappa executed registered gift deed dated 24-4-1967 in favour of his sons Vadde Subbarayudu and Vadde Parameswarudu, who, in turn, transferred the property to Vengala Reddy by means of registered sale-deed dated 17-6-1970 (Ac.2-29 cts.) and 4-3-1974 (Ac.2-28 cts.) respectively. After 19 years, appellant No.1 – Mohammad Hussain Miah purchased the land from the legal heirs of Vengala Reddy vide registered sale-deed dated 19-2-2001. In 2005, appellant No.1 entered into an agreement with appellant No.2 for sale of the property in question. However, when the sale-deed was presented before respondent No.1 for registration, he declined to register the same by citing the contents of Memo dated 22-7-2005 sent by respondent No.2 as the cause.

The appellants challenged the refusal of respondent No.1 to register the document by contending that respondent No.2 does not have the jurisdiction, power or authority to issue instructions to respondent No.1 for not registering the documents pertaining to land forming part of Survey No.396 of Dinnedevarapadu Village. They also contended that the dispute sought to be created by respondent No.2 regarding the title of the legal heirs of Vengala Reddy did not justify refusal of respondent No.1 to register the document.

The learned Single Judge summarily dismissed the writ petition by observing that the writ petitioners

(appellants herein) have got an effective alternative remedy of appeal under Section 72 (1) of the Registration Act, 1908 (for short, 'the Act') or suit under Section 77 and, therefore, there is no justification to entertain their prayer.

Shri S.V. Ramana reiterated the grounds on which the appellants challenged the refusal of respondent No.1 to register the sale-deed executed by appellant No.1 and argued that the learned Single Judge gravely erred by declining to entertain the writ petition only on the ground of availability of alternative remedies. Learned counsel emphasized that respondent No.2 does not have the power to issue directions prohibiting registration of sale-deed and the learned Single Judge committed an error by dismissing the writ petition without going into this jurisdictional issue. He then submitted that the remedies available to the appellants under Section 72 and 77 of the Act cannot be treated as effective because no time limit has been prescribed for disposal of the appeal and suit.

Learned Government Pleader for Revenue supported the order under challenge and argued that the learned Single Judge rightly refused to entertain the writ petition on the ground of availability of the alternative remedies of appeal and suit. He submitted that the provisions of Sections 71 to 77, which casts a duty on the Sub-Registrar to record reasons for refusing to register the document and also provides for remedies of appeal (Section 72) and suit (Section 77) are part of

the scheme of the Act and, therefore, the remedies available to the appellant must be treated as effective alternative remedies.

We have thoughtfully considered the respective submissions. Sections 71, 72 and 77 of the Act, which have a bearing on the decision of this appeal read as under:

> "**71. Reasons for refusal to register to be recorded:--** (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.
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> (2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.
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> **72. Appeal to Registrar from orders of Sub-Registrar refusing registration on grounds other than denial of execution: --**
> (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such

order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59, and 60, and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

77. Suit in case of order refusal by Registrar:-- (1) Where the Registrar refuses to order the document to be registered under Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit."

An analysis of the above reproduced provisions make it clear that refusal of the Sub-Registrar to register the document must be accompanied by reasons to be recorded by the officer in Book No.2. This

requirement is not applicable when refusal to register the document is founded on the premise that the property is not situated within his domain. If the person executing the document or making claim under the document makes an application, the Sub-Registrar has to supply him a copy of the reasons recorded by him. This section represents statutory embodiment of one of the facets of rules of natural justice, which obligates every quasi-judicial authority to record reasons in support of its decision and communicate the same to the aggrieved person. Section 72 provides for an appeal against an order passed by the Sub-Registrar refusing to admit a document to registration except when such refusal is made on the ground of denial of execution. Under sub-section (1) of Section 72, the Registrar can reverse or modify the order of the Sub-Registrar. If the Registrar directs registration of the document, then the Sub-Registrar is obliged to take steps for registration of such document. If the Registrar refuses to order registration of the document, then any person claiming under such document, or his representative, assignee or agent can file a suit in the Civil Court for grant of a decree directing registration of the document. Sections 73, 74, 75 and 76, which belong to one family, provide for submission of application to the Registrar where Sub-Registrar refuses to register document on the denial of execution and also for disposal of such application. These provisions, which form integral part of the scheme of the Act, constitute a

complete Code unto themselves. Therefore, the remedies of appeal and suit available to the aggrieved person under Sections 72 and 77 of the Act have to be treated as effective alternative remedies.

If the order under challenge is examined in the light of the above analysis of the relevant provisions, we have no hesitation to approve the view taken by the learned Single Judge that the writ petitioners (appellants herein) should be non-suited on the ground of availability of effective alternative remedies.

In our opinion, the remedies available to the appellants under Sections 72 and 77 of the Act are effective alternative remedies and there is no extra-ordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner – **A.V. Venkateshwaran v. R.S. Wadhwani** [1], **Thansingh Nathmal v. Superintendent of Taxes** [2], **Baburam v. Zilla Parishad** [3], **Titaghur Paper Mills Co. Ltd. v. State of Orissa** [4], **Champa Lal v. I.T. Commissioner** [5], **J.M. & Co. v. Agricultural I.T. Officer, Assam** [6], **C.I.T. v. Ramendra Nath Ghosh** [7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.** [8], **Gujarat University v. N.U. Rajguru** [9], **State of H.P. v. Raja Mahendra Pal** [10],

L.L. Sudhakar Reddy v. State of A.P. [11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,** [12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,** [13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,** [14].

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1**}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration

proceedings."

The case of the appellant does not fall within the ambit of any of the exceptions enumerated in **Harbanslal Sahnia's** case (supra). Therefore, it is not possible for the Court to overlook the fact that they have effective alternative remedies by way of appeal and suit.

Before concluding, we may mention that even though the learned Single Judge dismissed the writ petition summarily without calling upon the respondents to file counter, in pursuance of the direction given by the Division Bench on 8-11-2006, counter-affidavit dated 14-12-2006 has been filed by respondent No.2 and contents thereof, which have not been controverted by the appellants by filing rejoinder affidavit, amply support the view we have taken on the issue of alternative remedy. According to respondent No.2, assignment of land in favour of Vadde Pullamma was cancelled on 26-10-2005 because she and her heirs violated the conditions of assignment. Therefore, it will be for the appellate authority constituted under the Act to consider whether there exist valid ground for registration of the sale-deed and refusal of respondent No.1 to do so is legally sustainable.

For the reasons stated above, we hold that the learned Single Judge did not commit any error by declining relief to the appellants and the appeal is

liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the writ appeal, WAMP No.2448 of 2006 filed by the appellants for fixing the appeal for early hearing is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

January 25, 2007

svs

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553